

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

JUN - 5 1992

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

BARBARA A. EVERLY, CLERK

IN RE:

Chapter 7
BANKRUPTCY NO.

JOHN F. CAREY and
CHERYL A. CAREY,

L-89-00564W

Debtors.

DONNA LESYSHEN, TRUSTEE,

ADVERSARY NO.

Plaintiff,

L-92-0039W

v.

ALL NAMED CREDITORS IN THE
BANKRUPTCY ESTATE OF THE DEBTORS,

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

Defendants.

JUN 05 1992

BARBARA A. EVERLY, CLERK

**JUDGMENT AND DECREE RE: TRUSTEE'S
COMPLAINT TO QUIET TITLE**

The Trustee's Application on her Complaint to Quiet Title came on for a trial setting conference on May 22, 1992. The following appearances were entered: Debtors - Attorney Charles Mattson; United States of America - Internal Revenue Service - Ana Maria Martel; United States Trustee's Office - attorney John Schmillen; Chapter 7 trustee - attorney Donna Lesyshen.

The Court, having reviewed the file, finds that the United States of America, on behalf of its agency, the Internal Revenue Service, has filed an answer as have the debtors. The Court, after discussing with Mr. Mattson and Ms. Martel their answers as they apply to the Complaint to Quiet Title, determined that the respective answers are not denials on the quiet title action and that the attorneys are not in resistance of the court entering an order to quiet title in the purchaser of the real property which is

the subject matter of this adversary proceeding, Mr. John F. Oliver.

The Court, also having reviewed the file in the matter, finds that the only named creditor in the bankruptcy estate of the debtors who has appeared is the United States Government with the remaining defendants having not appeared nor anyone for them. The Court finds from an inspection of the record that all said defendants have been duly, legally and timely served as certified to by the Trustee/Plaintiff. The Court further finds that all prerequisites to such service were fully complied with; and that all said Defendants, except as aforementioned, and their claims to the real estate herein, are now within the jurisdiction of the Court herein. Accordingly, default is now entered against all non-appearing defendants.

The Court finds, therefore, that the facts set forth in the Petition are true; that Mr. John F. Oliver is the absolute owner in fee simple of the land described in the Petition and herein; and that none of the defendants, those who have not appeared and those who have appeared, have any right, title, lien or claim thereto. The Court, based on the foregoing, has determined that the following decree should enter against all named creditors in the bankruptcy estate of the debtors, as defendants.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Mr. John F. Oliver is the sole, absolute and unqualified owner of the following described real estate:

The East Half (E 1/2) of the Northwest Quarter (NW 1/4),
except the North Six and two-thirds acres (N6 2/3 ac);
and

The South one acre of the Southwest quarter (1/4) of the Northwest quarter (1/4); and, the South three quarters (3/4) of the West half (1/2) of the Northwest quarter (1/4) of the Northeast quarter (1/4) of Section Eight (8), Township 92 North Range 7 West, Fayette County, Iowa.

free and clear of all rights, title, interests, liens or claims of any of said defendants and title of Mr. John F. Oliver is herein quieted and confirmed against all said defendants, each of whom is forever barred and estopped from having or claiming any right, title or interest in said premises or any part thereof.

IT IS FURTHER ORDERED that the payment of a real estate commission to Mr. L. Jerome Yeros is herein confirmed as requested in Count II of the Complaint.

IT IS FURTHER ORDERED that the trustee, Donna P. Lesyshen, shall have the abstract of title continued through the date of the recording of this judgment and decree with the Fayette County Recorder's Office. The trustee shall do all things reasonably necessary to address any objections to the merchantability of title. This Court reserves jurisdiction to resolve any disputes which may arise concerning the trustees obligations to show marketable title.

DONE AND ORDERED this 5th day of June, 1992.



Michael J. Melloy
MICHAEL J. MELLOY
Chief Bankruptcy Judge

RECORDED: Vol. 111
Page 113

Copies to:
Charles Mattson, Atty for Debtor;
Ana Maria Martel, Atty for Government;
U.S. Trustee; Alice Koempel;
Mr. John F. Oliver;
Alice Koempel;
this June 5, 1992
Miriam A. Galley
Deputy Clerk
P.O. Box 74890
Cedar Rapids, Iowa 52407

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF IOWA

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

SEP 17 1992

BARBARA A. EVERLY, CLERK

IN RE:

Chapter 7
BANKRUPTCY NO.

L-89-00564W

JOHN F. CAREY and
CHERYL A. CAREY,

Debtors.

DONNA LESYSHEN, TRUSTEE,

ADVERSARY NO.

Plaintiff,

L-92-0039W

v.

ALL NAMED CREDITORS IN THE
BANKRUPTCY ESTATE OF THE DEBTORS,

Defendants.

MOTION TO SHOW CAUSE FOR FAILURE OF
TRUSTEE TO COMPLY WITH COURT ORDER

Comes now John F. Oliver, through his attorney, and states:

1. He is the purchaser of certain real estate located in Fayette County, Iowa, from the Trustee, Donna P. Lesyshen, on a written Contract dated September 1, 1989 which Contract provides that the Trustee shall furnish him an abstract showing good and merchantable title. On September 8, 1989, the Court entered an Order approving said sale.

2. On June 5, 1992, the Honorable Michael J. Melloy, Chief Bankruptcy Judge, entered a Judgment and Decree Re: Trustee's Complaint to Quiet Title which is on file in Adversary No. L-92-0039W, quieting the title to the real estate in question and further providing in part, as follows:

Recorded:
Vol II

Page 113

"IT IS FURTHER ORDERED that the trustee, Donna P. Lesyshen, shall have the abstract of title continued through the date of the recording of this judgment and decree with the Fayette County Recorder's Office. The trustee shall do all things reasonably necessary to address any objections to the merchantability of title. This Court reserves jurisdiction to resolve any disputes which may arise concerning the trustee's obligations to show marketable title."

3. Attached hereto marked Exhibit "A" and made a part hereof is a copy of a letter dated May 28, 1992, written by the undersigned attorney which sets out in detail the matters required to be shown on the abstract by the Trustee to show a marketable title.

4. Although more than three months has elapsed since the entry of the Court's Order as hereinabove set out, the Trustee, Donna P. Lesyshen, has failed to provide the purchaser, John F. Oliver, with an abstract showing marketable title to the real estate in question as shown by the Affidavit hereto attached, marked Exhibit "B" and made a part hereof.

WHEREFORE, the said John F. Oliver prays that the Trustee, Donna P. Lesyshen, be forthwith required to show cause why she has failed to comply with the Court's Order to provide an abstract showing marketable title to the real estate in question, that hearing be had forthwith and she be thereupon required to show cause why she should not be punished for contempt of Court.

JOHN F. OLIVER
RURAL ROUTE
ARLINGTON, IOWA 50606

BY: Alice T. Koempel
Alice T. Koempel

TRAEGER & KOEMPEL LAW OFFICES
103 North Vine Street
P.O. Box 456
West Union, Iowa 52175
Telephone No. (319) 422-3859

ATTORNEY FOR JOHN F. OLIVER.
PIN: 2967

Copies to:

Donna P. Lesyshen, Trustee
531 Commercial Street
Ste. 500
Waterloo, Iowa 50701

John F. Schmillen
Staff Attorney
U.S. Trustee's Office
Suite 675
The Center
425 2nd St., S.E.
Cedar Rapids, Iowa 52401

Charles Mattson
Attorney for Debtor
2327 Falls Ave., Ste. 2
Waterloo, Iowa 50701

Ana Maria Martel
Attorney for Government
Internal Revenue Service
DAR Branch, SPS
P.O. Box 313
Des Moines, Iowa 50302

John F. Oliver
Rural Route
Arlington, Iowa 50606

John W. D. Hofmeyer III
231 South Main, Box 126
Fayette, Iowa 52142

Earl DeShaw
Route 2, Box 161
Arlington, Iowa 50606

CERTIFICATE OF SERVICE

I certify that I mailed a copy of the foregoing document to which this Certificate is attached to the parties or attorneys of record as set out above and at the respective addresses shown on the 15th day of September, 1992.

ALICE T. KOEMPEL, ATTORNEY
FOR JOHN F. OLIVER

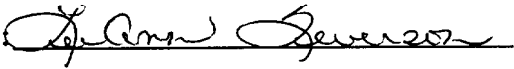
BY 

EXHIBIT "B"

STATE OF IOWA)
 (SS. AFFIDAVIT.
Fayette County)

I, Alice T. Koempel, do on oath depose and state that I am the attorney for John F. Oliver who purchased certain farm real estate from Donna P. Lesyshen as Trustee, all as set out in the Motion to which this is attached.

Donna P. Lesyshen, the Trustee, has not taken the necessary steps to provide my client, John F. Oliver, with an abstract showing marketable title although she has had three months to do so. I have personally checked with the County Recorder of Fayette County, Iowa, and have been advised that Donna P. Lesyshen has not filed the necessary transcripts in that office as set out in my letter of May 28, 1992. I also have personally talked with Tex Heyer, President of Fayette County Abstract Company of West Union, Iowa, and the only abstracter in Fayette County, and he advises me that no continuation of the abstract has been ordered by Donna P. Lesyshen or any other party.

Mr. Heyer has repeatedly assured me that he could have the abstract completed within two weeks after the necessary transcripts are filed with the County Recorder and he receives the Order from the Trustee.

Attached hereto are copies of my letters to Donna Lesyshen dated July 21, 1992, and August 14, 1992, requesting explanations as to why this matter has been delayed.

TRAEGER & KOEMPEL LAW OFFICES

A SOLE PROPRIETORSHIP

103 NORTH VINE STREET

POST OFFICE BOX 456

WEST UNION, IOWA 52175

EDGAR A. TRAEGER (RETIRED)
ALICE T. KOEMPEL

May 28, 1992

TELEPHONE
AREA CODE 319
422-3859

Honorable Michael Melloy
U.S. Bankruptcy Judge
Suite 800, The Center
425 Second Street, S.E.
Cedar Rapids, Iowa 52401

In re: John F. Carey and Cheryl A. Carey Bankruptcy
Quiet Title Action
Adversary No. L-92-0039W

My dear Judge Melloy:

As attorney for the purchaser, John F. Oliver, I have now received a copy of the proposed Order Re Trustee's Complaint to Quiet Title in connection with the above-captioned quiet title action.

The proposed Order appears to be acceptable as far as it goes. However, in light of the many problems and delays we have encountered in this matter, I would request that the Court add to the end of the Order a provision that the Trustee, Donna Lesyshen, submit the continued abstract showing marketable title to me for my final approval by a stated date.

The last continuation on the abstract is October 27, 1989, and it has never been brought up-to-date to show the corrections requested after my initial Opinion on November 21, 1989.

In order for the abstract to show a marketable title as required by the Contract between Mr. Oliver and the Trustee, the following matters need to be shown on the abstract:

1. The Warranty Deed from Inez Hamlett and her husband, Arnold Hamlett, to Donna Lesyshen, Trustee in Chapter 7 Bankruptcy. This was recorded June 13, 1990, in the Office of the County Recorder of Fayette County.

COPY

EXHIBIT "A"

Honorable Michael Melloy
Page 2
May 28, 1992

2. That portion of the transcript from the Bankruptcy Court which was recorded in Book 34 at Page 81 in the Fayette County Recorder's Office concerning the appointment of the Interim Trustee and approval of standing bond should be set out in full on the abstract and the showing that the Trustee did not reject the appointment.

3. The transcript from Bankruptcy Court which was recorded in the County Recorder's Office of Fayette County on May 17, 1990, in Book 34, Pages 435-441, showing the Bankruptcy Petition and particularly Schedule B-1 relating to the real property.

4. All of the proceedings to quiet title should be transcribed to the Fayette County, Iowa, Recorder's Office and shown on the abstract. This will take care of other objections which I had had concerning the proceedings to sell real estate and the erroneous abandonment of the property.

5. The Partial Release of Judgment of Phoenix Mutual Insurance Company.

6. The Partial Release of Judgment of Oelwein State Bank.

7. The Affidavit of Arnold L. Hamlett recorded May 23, 1990, with respect to the abandonment of Hattie Harriman and Glen Harriman of their claim to buildings situated on the premises.

8. There is also supposed to be an abstract to the South one acre of the Southwest Quarter of the Northwest Quarter of Section 8, Township 92 North, Range 7 West of the Fifth P.M. This description is included in the Contract, but was not included in the abstract. Donna Lesyshen had agreed that the abstract would be expanded to cover this acre.

Yours respectfully,

TRAEGER & KOEMPEL LAW OFFICES

BY: *Alicia T. Koempel*

ATK/bbs

Copies: Mr. John F. Schmillen
Mr. Charles T. Mattson
Ms. Ana Maria Martel, Internal Revenue Service
Ms. Donna Lesyshen, Trustee
Mr. John F. Oliver

It has now been three years since my client, John F. Oliver, purchased the said farm from the Trustee, and he still does not have an abstract showing marketable title.

Alice T Koempel

Subscribed and sworn to before me by Alice T. Koempel this 15th day of September, 1992.



Betty Steinlage
Notary Public in and for the State
of Iowa.

TRAEGER & KOEMPEL LAW OFFICES

A SOLE PROPRIETORSHIP

103 NORTH VINE STREET

POST OFFICE BOX 456

WEST UNION, IOWA 52175

EDGAR A. TRAEGER (RETIRED)
ALICE T. KOEMPEL

July 21, 1992

TELEPHONE
AREA CODE 319
422-3859

Ms. Donna Lesyshen
531 Commercial Street
Ste. 500
Waterloo, Iowa 50701

In re: John F. Carey and Cheryl A. Carey Bankruptcy
No. L-89-00564W
Adversary No. L-92-0039W

Dear Ms. Lesyshen:

It has now been over six weeks since the Judgment and Decree was entered by Judge Melloy in the quiet title action. You will note in the last paragraph that you were instructed to have the abstract of title continued through the date of the recording of the Judgment and Decree with the Fayette County Recorder's Office. You were also directed to do all things reasonably necessary to address any objections to the merchantability of the title.

I have checked with the abstracter today and he tells me that you have not contacted him concerning continuing the abstract.

I have also checked with the County Recorder and have discovered that there are no transcripts which have been filed from the Carey Bankruptcies during the last six weeks.

It is impossible to imagine what reason you might have for not having had the abstract continued and presented to me for my final Opinion by this date.

The abstract is at the Fayette County Abstract Company. Tex Heyer, the abstracter, is awaiting your instructions concerning its continuation.

Please review carefully your copy of my letter of May 28, 1992 to Judge Melloy which sets out in detail the matters yet to be shown on the abstract in addition to the quiet title action.

COPY

TRAEGER & KOEMPEL L. OFFICES

Ms. Donna Lesyshen

Page 2

July 21, 1992

I specifically call your attention to Paragraph 8 of my letter concerning the fact that an abstract is yet to be obtained for the South 1 acre of the Southwest Quarter of the Northwest Quarter of Section 8, Township 92 North, Range 7 West of the Fifth P.M. This description is included in the Contract but was not included in the abstract.

Please contact me no later than July 28, 1992, with an explanation of why no action has been taken with regard to the abstract. At that time, I would also like a definite commitment as to when I can expect it in my hands for examination.

Please be sure that everything is recorded in the Recorder's Office before you have the abstract brought up-to-date so that we can wind this matter up with one final examination.

Yours very truly,

TRAEGER & KOEMPEL LAW OFFICES

BY:

ATK/bbs

Copies: Honorable Michael J. Melloy
Mr. John F. Schmillen
Mr. John F. Oliver
Fayette County Abstract Company

TRAEGER & KOEMPEL LAW OFFICES

A SOLE PROPRIETORSHIP

103 NORTH VINE STREET

POST OFFICE BOX 456

WEST UNION, IOWA 52175

EDGAR A. TRAEGER (RETIRED)

ALICE T. KOEMPEL

TELEPHONE
AREA CODE 319
422-3859

August 14, 1992

Ms. Donna Lesyshen
531 Commercial Street
Ste. 500
Waterloo, Iowa 50701

In re: John F. Carey and Cheryl A. Carey Bankruptcy
No. L-89-00564W
Adversary No. L-92-0039W

Dear Ms. Lesyshen:

It has been over three weeks since I talked to you on the telephone and again went over my letter of May 28, 1992, with you, concerning the matters to be shown on the abstract in order to make the title marketable to the property which the above-captioned bankruptcy sold to my client, John F. Oliver in November of 1989.

I checked with the County Recorder this morning and there has been no transcript filed recently from the Carey Bankruptcy.

I have also contacted the Fayette County Abstract Office and talked to Tex Heyer and he tells me that you have never contacted him concerning bringing the abstract up-to-date.

I absolutely cannot understand your reasons for this constant delay.

Please contact me no later than August 18, 1992, with an explanation of why this matter is being further delayed.

Yours very truly,

TRAEGER & KOEMPEL LAW OFFICES

BY:

ATK/bbs

Copies: Honorable Michael J. Melloy
Mr. John F. Schmillen
Mr. John F. Oliver
Fayette County Abstract Company

COPY

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

In re:

JOHN F. CAREY
CHERYL A. CAREY
Debtor(s)

DONNA LESYSHEN, TRUSTEE
Plaintiff

v.

ALL NAMED CREDITORS IN THE
BANKRUPTCY ESTATE OF THE DEBTORS
Defendant

CHAPTER 7
Bankruptcy No.

L-89-00564-C

FILED
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

SEP 22 1992

BARBARA A. EVERLY, CLERK

Adversary Proceeding No.
L-92-0039-W

NOTICE Setting Hearing on Post Judgment Motion
to Show Cause for Failure of Trustee to Comply with Court Order

TO: Attorney for Plaintiff(s): Donna Lesyshen
Attorney for Movant/John F. Oliver; Alice Koempel
United States Trustee
Attorney for Debtor: Charles Mattson
United States Attorney: Ana Maria Martel

NOTICE IS HEREBY GIVEN the above matter(s) will come before the Court on:

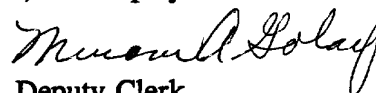
October 5, 1992 at 4:15 P.M.

At: Bankruptcy Court Room, 808, Chicago Central Building, E. 4th & Sycamore,
WATERLOO, IOWA.

DATED September 22, 1992.

BARBARA A. EVERLY
Clerk, Bankruptcy Court

by:



Deputy Clerk

P.O. Box 74890
Cedar Rapids, IA 52407

Copies mailed to
parties named above
on date shown mg

JH/mg

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHER DISTRICT OF IOWA

FILED
BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

SEP 18 1992

IN RE:

JOHN F. CAREY AND
CHERYL A. CAREY,

DEBTORS.

DONNA LESYSHEN, TRUSTEE

Plaintiff,

vs.

ALL NAMED CREDITORS IN THE
BANKRUPTCY ESTATE OF THE DEBTORS,

Defendants.

CHAPTER 7
BANKRUPTCY NO.
L-89-00564W

BARBARA A. EVERLY, CLERK

ADVERSARY NO.
L-92-0039W

TRUSTEE'S RESPONSE TO
MOTION TO SHOW CAUSE

COMES NOW the Trustee and states that she has sent all the documents to the Recorder's Office in Fayette County and is waiting for their return in order to have the abstract continued. As soon as the Trustee receives the recorded documents, instructions to the abstract company shall be given to continue the abstract thereby taking care of all of the concerns of both the U.S. Trustee's Office and Ms. Koempel.

By *Donna Lesyshen*
Donna Lesyshen, Trustee BL0007617
531 Commercial Street, Suite 500
Waterloo, Iowa 50701
(319) 291-7202

Copies to:

Alice T. Koempele
P.O. Box 456
West Union, IA 52175

John F. Schmillen
U.S. Trustee's Office
Suite 675, The Center
425 2nd Street SE
Cedar Rapids, Iowa 52401

Charles Mattson
2327 Falls Avenue, Suite 2
Waterloo, Iowa 50701

Ana Marie Martel
P.O. Box 313
Des Moines, Iowa 50302

John F. Oliver
Rural Route
Arlington, IA 50606

John W.D. Hofmeyer III
231 South Main, Box 126
Fayette, IA 52142

Earl DeShaw
Route 2, Box 161
Arlington, Iowa 50606

Copy mailed to
filing attorney

SEP 18 1992 *mg*

Recorded: Vol III
Page 113

Janet Reasoner
U.S. Trustee's Office
Suite 675, The Center
425 2nd Street SE
Cedar Rapids, Iowa 52401

2. DATE OF MAILING

The undersigned certifies that a copy of the document on which this stamp appears was mailed this date to all parties in interest herein as required by the Bankruptcy Act and Code and Rules of Bankruptcy Procedure.

Dated: Sept. 17, 1992

Melanie A. Hart

UNITED STATES BANKRUPTCY COURT -- NORTHERN DISTRICT OF IOWA
PROCEEDING MEMO AND ORDERDate: Oct. 5, 1992 Chapter 7 Bankr. No. L-92-0039W

IN RE: Adv. No. _____

DONNA LESYSHEN, Trustee
v.

ALL NAMED CREDITORS IN THE BANKRUPTCY ESTATE OF THE DEBTORS

FILED
U.S. BANKRUPTCY COURT S.C.
NORTHERN DISTRICT OF IOWA
OCT 08 1992
BARBARA A. EVERLY, CLERKAPPEARANCES: Attorney(s) for Plaintiff(s): Donna LesyshenAttorney(s) for Defendant(s): Charles Mattson for DebtorsAlice Koempel for John F. OliverU. S. Trustee: T. J. Rasmussen Other: _____NATURE OF PROCEEDING: XX In Court _____ Telephonic

<input type="checkbox"/> Trial	<input type="checkbox"/> Motion for Summary Judgment
<input type="checkbox"/> Status Conference	<input type="checkbox"/> Motion to Compel Discovery
<input type="checkbox"/> Pretrial Conference	<input checked="" type="checkbox"/> Other <u>Post Judgment Motion to Show Cause for Failure of the Trustee to Comply with Court Order</u>

OUTCOME OF PROCEEDING:

☒ The matter having been submitted,
☐ Having been informed that the matter is settled,
☐ And findings of fact and conclusions of law having been orally stated,

IT IS ORDERED THAT:

☐ The matter is taken under advisement. Briefs due _____☐ Settlement documents are to be submitted within 30 days or the matter will be dismissed pursuant to Local Rule 13(D).☐ JUDGMENT is entered as follows pursuant to Fed.R.Bankr.P. 9021.☒ (Other)

The trustee, Donna Lesyshen shall deliver
 fee for continuation of abstract (due to Oliver)
 to Abstractor Kay Mousty, October 12, 1992.

Copy this October 15, 1992 to
 Donna Lesyshen
 Alice Koempel
 U.S. Trustee
 Charles Mattson
 U.S. Attorney

this October 15, 1992 mg

SO ORDERED:

[Signature]
 U. S. Bankruptcy Judge

Recorded:
 Vol. III
 page 113